

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.8331/Del/2019
Assessment Year: 2003-04

Van Oord ACZ India Pvt. Ltd., C-9, Basement F/P Gulmohar Park, New Delhi	Vs.	DCIT, Circle-17(1), New Delhi
PAN :AABCV0555B		
(Appellant)		(Respondent)

Appellant by	Sh. Neeraj Jain, Advocate Sh. Tavish Verma, Advocate
Respondent by	Sh. Virendra Singh, Sr. DR

Date of hearing	18.05.2023
Date of pronouncement	29.05.2023

ORDER

PER SAKTIJIT DEY, JM:

Captioned appeal by the assessee arises out of order dated 30.08.2019 of learned Commissioner of Income Tax (Appeals)-34, New Delhi, for the assessment year 2003-04.

2. We have heard Sh. Neeraj Jain, learned counsel appearing for the assessee and Sh. Virendra Singh, learned Senior

Departmental Representative. We have also perused the materials on record.

3. The dispute in the present appeal relates to disallowance of reimbursement of mobilization and demobilization expenses of Rs.8,65,57,909/-.

4. Before we proceed to deal with the aforesaid substantive issue, it is necessary to provide a brief factual backdrop. The assessee, a resident corporate entity, is a wholly owned subsidiary of M/s. Van Oord ACZ BV, Netherlands (now M/s Van Oord ACZ Marine Contractors BV) (in short 'VOAMC'). As stated, the assessee is engaged in the business of dredging, contracting reclamation and marine activities. For the assessment year under dispute, the assessee filed its return of income on 24.11.2003 declaring loss of Rs.1,94,87,912/-, after claiming deduction, inter alia, of Rs.8,42,62,240/- in respect of reimbursement of mobilization and demobilization cost of dredgers incurred by holding company on behalf of the assessee. While framing the original assessment under section 143(3) of the Income-tax Act, 1961 (for short 'the Act') vide order dated 16.03.2006, the Assessing Officer disallowed the amount of Rs.8,65,57,909/- representing reimbursement of mobilization and demobilization

cost paid to the holding company. Against the disallowance so made, the assessee preferred an appeal before the first appellate authority and, being unsuccessful, went before the Tribunal.

5. While deciding the appeal, the Tribunal restored the matter to the Assessing Officer with a direction to verify whether the assessee has deducted tax at source from payment made towards mobilization and demobilization charges in terms of order passed under section 195(2) of the Act and, in case, it was found that the assessee had deducted tax at source, the deduction claimed should be allowed. Against the aforesaid decision of the Tribunal, the Revenue went in appeal before the Hon'ble Delhi High Court. Before the Hon'ble High Court, it was pleaded by the assessee and its holding company that the claim of the holding company that it is not liable to pay any tax in India, has been accepted by Income Tax Authorities. Therefore, there is no requirement to deduct tax at source. Considering the aforesaid submission, the Hon'ble High Court held as under:

“25. We, thus, answer the question No.1 in favour of the appellant/assessee holding that the assessee was not liable to deduct tax at source under section 195(1) of the Act in respect of the mobilization and demobilization costs reimbursed by the appellant to VOAMC. The assessment proceedings in VOAMC are reopened and the final view taken is that the VOAMC is assessable to tax, the assessee herein would also be treated as assessee in “default”,

which would attract the consequence provided under section 40(a)(i).”

6. As it appears, challenging certain observations of the Hon'ble Delhi High Court, the assessee filed a Special Leave Petition (SLP) before the Hon'ble Supreme Court. While deciding the SLP filed by the assessee, the Hon'ble Supreme Court, in order dated 23rd March, 2023, quashed and set aside the observations of Hon'ble Delhi High Court, insofar as, it related to treat the assessee as an assessee in default, in the event, the holding company is held to be assessable to tax in India. Accordingly, the consequences of section 40(a)(i) would be attracted. Thus, by virtue of the aforesaid decision of the Hon'ble Supreme Court, the dispute was set at rest. However, in the meanwhile, the Assessing Officer reopened the assessment for the impugned assessment year by invoking the provisions of section 147 of the Act. In the reassessment proceeding, the Assessing Officer taking note of the observations of the Hon'ble Delhi High Court (now quashed and set aside by Hon'ble Supreme Court) again disallowed mobilization and demobilization cost of Rs.8,65,57,909/- under section 40(a)(i) of the Act, alleging that the assessee failed to deduct tax at source on such payment.

7. As could be seen from the aforesaid narration of facts, while deciding Revenue's appeal arising out of earlier order of the Tribunal, the Hon'ble Delhi High Court in ITA No. 439 of 2008 has clearly and categorically held that the assessee was not liable to deduct tax at source under section 195(1) of the Act in respect of mobilization and demobilization costs reimbursed to the holding company, hence, cannot be treated as assessee in default. The further observations of the Delhi High Court - "*The assessment proceedings in VOAMC are reopened and the final view taken is that the VOAMC is assessable to tax, the assessee herein would also be treated as assessee in "default", which would attract the consequence provided under section 40(a)(i).*" has been quashed and set aside by the Hon'ble Supreme Court while deciding the SLP filed by the assessee. Thus, as on date, in view of the observations of Hon'ble Delhi High Court and Hon'ble Supreme Court, there was no legal obligation under section 195(1) on the assessee to deduct tax at source under section 195(1) of the Act on the reimbursement of mobilization and demobilization cost to the holding company (VOAMC). That being the case, the disallowance made under section 40(a)(i) of the Act

amounting to Rs.8,65,57,909/-, being unsustainable, is hereby deleted.

8. In the result, the appeal is allowed, as indicated above.

Order pronounced in the open court on 29th May, 2023

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 29th May, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi